M.G.G. PILLAI

v.

TAN SRI DATO' VINCENT TAN CHEE YIOUN & 2 OTHER APPEALS

COURT OF APPEAL, KUALA LUMPUR
TAN SRI DATO' HJ. LAMIN BIN HJ. MOHD YUNUS PCA,
TUAN GOPAL SRI RAM JCA,
DATO' HJ. ABU MANSOR BIN ALI JCA
[CIVIL APPEALS NOS: W-02-221 OF 1994,
W-02-222 OF 1994, W-02-223 OF 1994]
22 MAY 1995

***TORT**: Defamation - Libel - Assessment of damages - Trial Judge awarding plaintiff RM10 Million in damages - Whether exessive - Whether correct principles applied - Defence of justification and fair comment - Failure of defence - Whether damages would be colossal.*

***TORT**: Defamation - Libel - Failure to plead defence - Effect - Whether defendant only confined to mitigate on damages - Whether plaintiff bound to seek interlocutory judgment - Rules of the High Court 1980 O. 19 r. 7.*

***EVIDENCE**: Defamation - Libel - Claim for general damages - Proof - Whether damages to be specifically pleaded and proved.*

The appeals herein arose out the decision of the learned Judge finding the appellants and some other defendants severally liable for defamation and for conspiracy to defame, and awarding against them RM10 million in damages in consequence. The torts in question were committed *vide* a series of articles published in a magazine called "Malaysian Industry", of which the third appellant was the editor in chief, the first appellant the author of one of the articles, and the second and fourth appellants the printer and publisher respectively of the magazine. The respondent, the beneficiary of the award, was a prominent businessman having business reputation both in Malaysia and abroad.

At the trial below, except for the second appellant, none of the appellants had filed their defence to the claim. Despite the non-delivery of defence, no interlocutory judgment was taken, and the learned trial Judge, as a result, went on with the case and proceeded to hear fully the respondent's evidence. The Judge then came to the conclusion that very serious libel had been perpetrated on the respondent, and that, bearing in mind his status in society, the mode and extent of the publication, the failure of the defence of justification, and the absence of any proper apology, a colossal award was called for, "as a signal to the public at large of the full vindication of the plaintiff's reputation".

Before the Court of Appeal the main issues raised by the appellants were (1) that the learned Judge had disposed of the case with such an unholy haste and by that had prejudiced the appellants and (2) that the quantum of award ordered was unduly exessive, and was so out of line with the usual trend of awards in defamation actions, that the same ought to be disturbed by the appellate Court.

Held:

Per Gopal Sri Ram JCA:

[1] The plaintiff in a libel action is not bound to enter default judgment notwithstanding that there was no pleading delivered by the defendant, there being no such compulsion in the language of O. 19 r. 7 of the Rules of the High Court 1980. Faced with the non-delivery of defence herein, the respondent had a choice whether to enter interlocutory judgment or to set the action down for trial for the purpose of vindicating his reputation and to have his damages assessed.

[2] There was nothing unusual about the time it took for this matter to come for hearing. The suggestion that the action had come for trial with undue haste is unsustainable as it overlooked the fact that only the second appellant had delivered a defence. A Judge who had scheduled a case for a limited number of days, furthermore, may proceed beyond in order to complete a trial. Indeed it is desirable that such a course be adopted.

[3] It is well settled practice that a defendant who elects not to plead to a statement of claim in a libel action is confined only to challenging the measure of damages which the plaintiff ought to receive but not the liability. Hence, the attempt to reopen the issue of liability by the third and fourth appellants must come to no avail.

[4] The fact that only the respondent gave evidence as of the extent of the reputational damage suffered by him is not fatal to his claim. As amplified by s. 134 of the Evidence Act 1950, there was no necessity for the respondent to call other witnesses to prove his damages. In any case the respondent is claiming for general damages, and as such, damages need not be specifically pleaded and proved. Damages are presumed to follow from the appellants' act.

[5] There is no merit in the argument that the award here is out of line with the trend of damages usually awarded in libel actions. It cannot be argued with confidence that there is, in our jurisdiction, a line of cases that may be said to represent or even resemble a discernible trend of authority upon the quantum of damages that are to be awarded in libel actions. There are certainly no comparables unlike those which exist in personal injury cases.

[6] Injury to a person's reputation may occasion him at least as much, if not greater, harm than injury to his physical self. In the circumtances this Court must record its strong disapproval of any judicial policy that is directed at awarding very low damages for defamation. And no one, least of all a journalist, should rest in the comfort that a person's reputation may be injured with impunity on the footing that the consequense would be the payment of a few thousand ringgit in damages. The time has arrived for this Court to send a strong and clear signal to all and sundry that libel does not come cheap.

[7] Bearing in mind the respondent's status in society, and the fact that the first appellant is a professional journalist of international repute, and the venom with which the respondent was attacked, it is proper that the Court awarded substantial damages. More so when the plea of justification fails as, in an action for libel, damages do multiply when justification fails.

Per Haji Lamin bin Haji Mohd Yunus PCA (concurring):

[1] It is desirable to set a case of this nature for early trial when the facts are so fresh in everyone's mind and both the assailed, the assailant and the Judge are in every sense very much contemporaneous with the circumstances. Justice could not have been better served

with the Judge making an immediate assessment of the evidence with his findings delivered without delay.

[2] The first appellant is a writer of international repute and in this light it cannot be denied that he had at least a quarter of the world as his readers. His article "Press Manouvres", the subject matter of the suit against him, was written without intending to give himself even a momentary opportunity to reflect on the effect of his words. His answers to questions in cross examination clearly show that he is no respecter of persons with blatant disregard for respectability and is prepared to maul any person in his path without sufficient evidence. In the circumstances the learned Judge below rightly and properly awarded aggravated damages. Clearly the judgment in this case should serve as a signal to all journalists.

Per Abu Mansor bin Ali JCA (concurring):

[1] As no pleadings had been filed except by the second appellant, the respondent's Counsel could not be faulted for moving for an early trial. The allegation that the learned Judge was in "unholy haste" is unfair and is unfounded bearing in mind the facts.

[2] The learned Judge had carefully looked for and found sufficient evidence of defamation and conspiracy to defame, which, of course, merges with the tort of defamation.

[3] It is trite that no special damage need be pleaded and proved if the defamatory matter, as found by the learned Judge, speaks of the plaintiff in the way of his profession, office or calling and the plaintiff only claims general and not special damages.

[4] The learned Judge had also considered the quantum carefully having regard to the position of the plaintiff in his world. It cannot be said that the learned Judge was in error in law as to justify this Court to interfere.

[Appeal dismissed].

[Bahasa Malaysia Translation of Headnotes**]**

***TORT**: Fitnah - Libel - Taksiran gantirugi - Hakim perbicaraan memberi gantirugi sebanyak RM10 juta kepada plaintif - Samada berlebihan - Samada prinsip yang betul dipakai - Pembelaan justifikasi dan komen berpatutan - Kegagalan pembelaan - Samada gantirugi menjadi amat besar.*

***TORT**: Fitnah - Libel - Kegagalan memplid pembelaan - Kesan - Samada defendan hanya boleh merayu terhadap gantirugi - Samada plaintif semestinya memohon penghakiman interlokutori - Kaedah-Kaedah Mahkamah Tinggi 1980 A. 19 k. 7.*

***KETERANGAN**: Fitnah - Libel - Tuntutan untuk gantirugi am - Pembuktian - Samada gantirugi perlu diplid dan dibuktikan secara khusus.*

Rayuan-rayuan di sini berbangkit dari keputusan Yang Arif Hakim mendapati perayu-perayu serta beberapa defendan lain masing-masing bertanggungan kerana fitnah dan pakatan untuk memfitnah, dan sebagai akibatnya, memerintahkan terhadap mereka bayaran gantirugi sebanyak RM10 juta. Tort-tort tersebut dilakukan menerusi satu rangkaian rencana-rencana yang disiarkan di dalam sebuah majalah yang dipanggil "Malaysian Industry", di mana perayu ketiga adalah ketua editornya, perayu pertama penulis salah satu daripada rencana-rencana tersebut, dan perayu kedua dan keempat masing-masing adalah pencetak dan penerbit majalah berkenaan. Responden, benefisiari perintah di atas, adalah seorang ahli perniagaan terkenal dan mempunyai reputasi niaga di dalam dan diluar Malaysia.

Semasa perbicaraan di bawah, kesemua perayu, kecuali perayu kedua, tidak memfail pembelaan terhadap tuntutan plaintif. Walaupun tiada pembelaan dikemukakan, penghakiman interlokutori tidak dipohon oleh responden, dan Yang Arif Hakim perbicaraan, akibatnya, meneruskan perbicaraan dan mendengar sepenuhnya keterangan responden. Hakim kemudian memutuskan bahawa satu libel yang serius telah dilakukan terhadap responden, dan oleh yang demikian, mengambil kira status responden dalam masyarakat, gaya dan takat penyiaran fitnah berkenaan, kegagalan pembelaan justifikasi, serta tiadanya permohonan maaf yang betul, satu awad yang besar perlu diberikan, "sebagai petanda kepada orang ramai tentang pemulihan sepenuhnya reputasi plaintif".

Dihadapan Mahkamah Rayuan isu-isu penting yang dibangkitkan oleh perayu-perayu ialah (1) bahawa Yang Arif Hakim telah mendengar bicara kes ini dengan kecepatan yang sangat luarbiasa dan dengan itu telah memprejudis perayu-pearyu dan (2) bahawa jumlah gantirugi adalah terlalu berlebihan dan di luar kebiasaan awad-awad yang diberi dalam tuntutan fitnah, dan oleh itu perintah tersebut harus diganggu oleh Mahkamah Rayuan.

Diputuskan:

Oleh Gopal Sri Ram HMR:

[1] Seseorang plaintif di dalam tuntutan libel tidak terikat untuk mendapatkan penghakiman ingkar walaupun tiada pembelaan dikemukakan oleh defendan, paksaan sedemikian tidak wujud dalam perbahasaan A. 19 k. 7 Kaedah-Kaedah Mahkamah Tinggi 1980. Berhadapan dengan ketiadaan pembelaan di sini, responden mempunyai pilihan samada untuk mendapatkan penghakiman interlokutori ataupun meneruskan perbicaraan dengan tujuan untuk memulihkan reputasinya serta untuk mentaksir gantirugi.

[2] Tidak ada apa-apa keluarbiasaan tentang masa yang diambil untuk membicarakan kes ini. Tuduhan yang mengatakan bahawa kes ini telah dibicarakan dengan kecepatan yang keterlaluan tidak boleh diterima oleh kerana tuduhan tersebut tidak peka kepada hakikat bahawa hanya perayu kedua memasukkan pembelaan. Lagipun, seseorang Hakim yang telah pun menetapkan hari-hari tertentu untuk membicarakan kesnya, boleh meneruskan perbicaraan melampaui hari-hari tersebut untuk menyudahkan perbicaraan. Tindakan sedemikian malahan adalah perlu.

[3] Dalam tindakan libel ianya adalah satu amalan yang terpakai bahawa seseorang defendan yang memilih untuk tidak mengemukakan pembelaan hanya boleh membantah tentang takat gantirugi yang harus diberi kepada plaintif dan tidak tentang liabiliti. Oleh hal yang demikian percubaan perayu ketiga dan keempat untuk membuka semula isu liabiliti tidak harus dilayan.

[4] Hakikat bahawa hanya responden seorang memberikan keterangan berhubung had kemusnahan reputasi yang dialaminya tidak menjejaskan tuntutan beliau. Sebagaimana yang dijelaskan oleh s. 134 Akta Keterangan 1950, tidak ada keperluan untuk responden memanggil saksi-saksi tambahan untuk membuktikan kesnya. Walau apapun, responden hanya menuntut gantirugi am, dan oleh itu, tidak perlu untuknya memplid atau membuktikan kerugian secara khusus.

[5] Hujah bahawa awad yang diberikan disini tidak mengikut awad yang biasa diberi dalam tindakan-tindakan libel adalah tidak bermerit. Ianya tidak dapat dihujahkan dengan yakin bahawa dalam bidangkuasa kita wujud rangkaian kes-kes yang boleh dianggap sebagai melambangkan autoriti jelas tentang jumlah gantirugi yang harus diberi dalam kes-kes libel. Yang jelas kes-kes perbandingan tidak wujud seperti yang berlaku kepada kes-kes kecederaan diri.

[6] Kerosakan nama baik seseorang, dibandingkan dengan kecederaan fizikal, mungkin mendatangkan kemudaratan yang sama hebat kepadanya, jikapun tidak lebih hebat lagi. Oleh hal yang demikian, Mahkamah ini mestilah merakamkan ketidaksetujuannya yang keras terhadap mana-mana dasar kehakiman yang menjurus kearah memberi gantirugi yang kecil bagi perbuatan fitnah. Dan tidak seorang pun, lebih-lebih lagi seorang wartawan, harus berasa lega kerana beranggapan bahawa nama baik seseorang itu boleh dirosakkan sewenang-wenangnya oleh kerana akibatnya hanyalah membayar gantirugi yang berjumlah beberapa ribu ringgit sahaja. Masanya sudah sampai bagi Mahkamh ini menghantar satu petanda yang keras dan jelas bahawa fitnah bukanlah satu perbuatan yang murah harganya.

[7] Mengambil kira status responden dalam masyarakat, hakikat bahawa perayu pertama adalah seorang wartawan profesional yang dikenali diperingkat antarabangsa, dan cara perayu menyelar responden dengan penuh kebencian, adalah wajar bagi Mahkamah memberikan gantirugi yang besar. Lebih-lebih lagi apabila pembelaan justifikasi gagal, oleh kerana, gantirugi menjadi berlipatganda apabila pembelaan sedemikian gagal.

Oleh Haji Lamin bin Haji Mohd Yunus PMR (bersependapat):

[1] Adalah dikehendakki bahawa kes seperti ini dibicarakan dengan cepat semasa fakta-fakta masih lagi segar dalam ingatan semua pihak dan kesemua yang terlibat termasuk Hakim berada dalam keadaan yang serentak dengan halkeadaan yang wujud. Tidak ada cara yang lebih baik untuk mempraktikkan keadilan selain dari seseorang Hakim itu membuat taksiran seawal mungkin terhadap keterangan yang wujud dan memberi keputusan tanpa lengah.

[2] Perayu pertama adalah seorang penulis yang dikenali diperingkat antarabangsa, dan dari segi ini, tidak dapat dinafi bahawa dia memilikki seperempat dunia sebagai pembacanya. Rencananya yang bertajuk "Press Manouvres", yang menjadi asas tuntutan terhadapnya, telah ditulis tanpa sedikitpun memikirkan tentang kesan kata-kata yang digunakannya. Jawapan beliau terhadap soalan-soalan dalam pemeriksaan balas menunjukkan dengan jelas bahawa selain tidak menghormati orang dan langsung tidak memperdulikan maruah orang lain, beliau juga bersedia untuk melapah sesiapa sahaja yang menjadi penghalangnya walaupun tanpa bukti yang cukup. Dalam halkeadaan ini perintah gantirugi "aggravated" yang dibuat oleh Yang Arif Hakim di bawah adalah tepat dan betul. Jelas bahawa keputusan kes ini patut menjadi teladan kepada semua wartawan.

Oleh Abu Mansor bin Ali HMR (bersependapat):

[1] Oleh kerana tiada pliding difailkan kecuali oleh perayu kedua, Peguam responden tidak boleh dipersalahkan kerana memohon perbicaraan awal. Tuduhan bahawa Yang Arif Hakim bertindak secara "unholy haste" adalah tidak adil dan tidak berasas, mengambil kira fakta yang wujud.

[2] Yang Arif Hakim telah meneliti dengan cermat untuk mencari, dan mendapati, keterangan yang cukup tentang perbuatan fitnah, dan pakatan untuk memfitnah, pakatan mana, tentunya bersatu dengan tort fitnah.

[3] Adalah jelas bahawa kerugian yang khusus tidak perlu diplid atau dibuktikan jika perkara yang difitnahkan itu, seperti yang didapati oleh Yang Arif Hakim, menyentuh profesion, jawatan atau pekerjaan plaintif dan plaintif pula hanya menuntut gantirugi am.

[4] Yang Arif Hakim juga telah menimbang dengan cermat soal kuantum, seetelah mengambil kira kedudukan responden dalam dunianya. Yang Arif Hakim tidak boleh dikatakan telah melakukan kesilapan di sisi undang-undang bagi membolehkan Mahkamah ini campur tangan.

[Rayuan ditolak].

Cases referred to:
Allsop v. Church of England Newspaper Ltd. [1972] 2 QB 161 ***(refd)***
Lewis v. Daily Telegraph Ltd. (sub nom, Rubber Improvement Ltd. v. Daily Telegraph Ltd.) [1964] AC 234 ***(dist)***
Nagy v. Cooperative Press Ltd. [1949] 2 KB 188 ***(foll)***
Ashmore v. Corp Lloyd's [1992] 2 All ER 486 ***(foll)***
Barindra Kumar Ghose & Ors v. The Emperor [1909] 14 CWN 1114 ***(refd)***
Gill v. Woodfin [1884] 15 Ch. D. 707 ***(refd)***
Montagu v. Land Corporation [1887] 56 LT 730 ***(refd)***
Tan Sri Khoo Teck Puat & Anor v. Plentitude Holdings Sdn. Bhd. [1994] 3 MLJ 777 ***(dist)***
Calvet v. Tomkies [1963] 3 All ER 610 ***(refd)***
Lachman v. Pyarchand AIR 1959 Raj 169 ***(refd)***
Vadivelu Thevar v. State of Madras AIR 1957 SC 614 ***(foll)***
Ram August Tewari & Ors v. Bindeshwari Tewari & Ors AIR 1972 Pat. 142 ***(foll)***
Cassell & Co Ltd. v. Broome [1972] AC 1027 ***(refd)***
Wan Abdul Rashid v. S. Sivasubramanian [1984] 1 MLJ 385 ***(cit)***
Ng Cheng Kiat v. Overseas Union Bank [1984] 2 MLJ 140 ***(cit)***
Great One Coconut Products Industries (M) Sdn. Bhd. v. Malayan Banking Bhd [1985] 2 MLJ 469 ***(cit)***
Carson v. John Fairfax & Sons Ltd. [1993] 113 ALR 577 ***(refd)***
Khair-ud-Din v. Tara Singh AIR 1927 Lah. 20 ***(foll)***
Rookes v. Barnard [1964] AC 1129 ***(foll)***
Lee Kuan Yew v. J. B. Jeyaratnam [1979] 1 MLJ 281 ***(dist)***
Associated Leisure Ltd. v. Associated Newspapers Ltd. [1970] 3 WLR 101 ***(foll)***
Sadasiba Panda v. Bansidhar Sahu AIR 1962 Orissa 115 ***(refd)***
Neeld & Ors v. Western Broadcasting Co. Ltd. [1976] 65 DLR 574 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 19 r. 7
Evidence Act, 1950, s. 134
Defamation Act, 1957, s. 18

Other sources referred to:
Treatise on the Law of Damages And Compensation, Kameswara Rao 5th edn, vol. 3.

(Appeal No. W-02-221-94)
For the appellant - Karpal Singh; M/s. Karpal Singh & Co.
For the respondent - V.K. Lingam (W. Satchithanandhan, v. Sivaparanjothi & Adam Bachek with him); M/s. Adam Bachek & Assoc.
(Appeal No. W-02-222-94)
For the appellant - Karpal Singh (Ramdhari with him); M/s. K.C. Yap, Kamaludin & Partners
For the respondent - V.K. Lingam (W. Satchithanandhan, v. Sivaparanjothi & Adam Bachek with him); M/s. Adam Bachek & Assoc.
(Appeal No. W-02-223-94)
For the appellants - Shamsul-Baharain (Chan Chong Choon with him); M/s.Skrine & Co.
For the respondent - V.K. Lingam (W. Sathithanandhan, V. Sivaparanjothi & Adam Bachek with him); M/s. Adam Bachek & Asscoc.

JUDGMENT

Gopal Sri Ram JCA:

What is a man's reputation worth? That is the question around which these appeals revolve. There were seven defendants in the Court below. Against each of them the learned Judge who heard the action assessed general damages as follows:

(1) as against the first defendant, a sum of RM3 million;

(2) as against the second defendant, a sum of RM750,000;

(3) as against the third defendant, a sum of RM2 million;

(4) as against the fourth defendant, a sum of RM1 million;

(5) as against the fifth defendant, a sum of RM250,000;

(6) as against the sixth defendant, a sum of RM2 million; and

(7) as against the seventh, a sum of RM1 million.

Appeal No. 10-02-222-94

For the appellant: ...M/s K.C Yap, Kamaludin & PArtners.

Appeal No: 10-02-223-94...M/s Skrine & Co.

Of these, only the first, third, sixth and seventh defendants lodged appeals. Because of the order in which their respective notices of appeal were filed and because this Court heard these appeals together, it will be convenient to refer to the third defendant as "the first appellant", the seventh defendant as "the second appellant", the first defendant as "the third appellant" and the sixth defendant as "fourth appellant". To these appeals, the plaintiff is the sole respondent.

There is one other matter that requires mention. It has to do with the delivery of pleadings. Of the appellants before us, only the second delivered a defence to the action. None of the others did. The importance of this fact will emerge when I come to deal with the course the case took and the attack that was levelled against the learned Judge in the way in which he handled matters at the trial.

Encik Karpal Singh who appeared for the first and the second appellants vigorously, but with his usual courtesy, attacked the award made against his clients. He said it was too high and out of line with the usual trend of awards for plaintiffs in defamation actions. He also complained that the damages claimed had not been proved; the plaintiff merely alleging loss but proffering no evidence in support. Last, but not least, he criticised, what he termed the unholy haste, with which the trial had been proceeded with, which, he submitted, was an unsatisfactory feature of the case, warranting appellate interference.

Encik Shamsul Baharain who appeared for the third and fourth appellants, quite apart from attacking the quantum of the award, also attempted to challenge the finding on liability; and this despite his clients' failure to deliver their defence to the action.

These submissions I shall make mention of in full, when I come to deal with the merits of the appeals. But in order to appreciate them it is first necessary to recite some of the salient facts.

The respondent, as found by the learned Judge (which finding has not been challenged in these appeals), is a well known, prominent and successful businessman in Malaysia and internationally. He brought an action against the instant appellants and the other defendants in the Court below claiming damages for defamation and for conspiracy to defame. His complaint was in respect of a series of articles appearing in a monthly business magazine called "Malaysian industry". At all material times, the third appellant was its Editor-in-Chief, while the first appellant authored one of the articles complained

of. The second and fourth appellants are the printer and publisher respectively of the magazine in question.

There is no controversy as to the defamatory nature of the articles in question. For the purpose of these appeals only the article authored by the first appellant is of relevance. It appeared in the issue of the magazine published for the month of October 1993. A coloured photograph of the respondent appeared on page 16 of that issue with the caption: "Vincent Tan: Warned journalists." The article carries the banner headline: "Press Manoeuvres" The passages complained of read as follows:

> Other corporate figures acquire media organisations to further their own interests. Launched with great fanfare, *The Sun* faded swiftly, becoming a vehicle for furthering the interests of its principal backer, Tan Sri Vincent Tan of the Berjaya Group. The paper began with great promise, printing political gossip and news that the other newspapers ignored. But the notion that it would be an alternative voice was quickly disabused.
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> P. Tamilmani, the fiery editor of a Tamil weekly, *Thoothan,* went on a hunger strike in July to protest The Anti-Corruption Agency's (ACA) results in the investigation of Dato' Sri S. Samy Vellu. *The Sun* stood alone in reporting this incident. Following that, Tan Sri Vincent called another meeting of his editorial staff and complained that the paper was preventing him from getting government contracts since approval for some of his projects had to come from Samy Vellu. Vincent warned that Vellu was not to be criticised anymore. As a result, *The Sun* was reduced to being an in-house paper for the Berjaya Group. Vincent's insistence that the paper 'not criticise his friends or praise his enemies' saw four senior members of the editorial staff resigning in protest...

The statement of claim, having pleaded these offending words in paragraph 11, proceeds to attribute to them, in accordance with well established practice (see *Allsop v. Church of England Newspaper Ltd.* [1972] 2 QB 161) their natural and ordinary meaning. Lawyers term it "a false innuendo". It is the meaning which the published words would convey to an ordinary man - a reasonable man. The mind of such a man is unaffected by the knowledge of any special circumstances that would lend to the words a particular meaning different from their ordinary meaning. Such a special or extraordinary meaning that will be conveyed only to the mind of one who has special knowledge of facts that are extrinsic to the published words is known as the "true innuendo" or "the legal innuendo". Where a "true" or "legal" innuendo is relied upon, full particulars of the extrinsic facts that give rise to it must be pleaded: for it vests in the plaintiff a separate and distinct cause of action.

The decision of the House of Lords in *Lewis v. Daily Telegraph Ltd. (sub nom, Rubber Improvement Ltd. v. Daily Telegraph Ltd.*) [1964] AC 234 contains all the knowledge upon this subject. I need only to refer to certain passages in the speeches of Lord Reid and Lord Devlin.

I quote first from the speech of Lord Reid, at page 258:

> There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs. I leave aside questions of innuendo where the reader has some special knowledge which might lead him to attribute a meaning to the words not apparent to those who do not have that knowledge.

Later he added:

> What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning. Here there would be nothing libellous in saying that an inquiry into the appellants' affairs was proceeding: the inquiry might be by a statistician or other expert. The sting is in inferences drawn from the fact that it is the fraud squad which is making the inquiry.

Next I quote from the speech of Lord Devlin at page 278:

> A derogatory implication may be so near the surface that it is more difficult to detect. If it is said of a man that he is a fornicator the statement cannot be enlarged by innuendo. If it is said of him that he was seen going into a brothel, the same meaning would probably be conveyed to nine men out of ten. But the lawyer might say that in the latter case a derogatory meaning was not a necessary one because a man might go to a brothel for an innocent purpose. An innuendo pleading that the words were understood to mean that he went there for an immoral purpose would not, therefore, be ridiculous. To be on the safe side, a pleader used an innuendo whenever the defamation was not absolutely explicit. That was very frequent, since scandalmongers are induced by the penalties for defamation to veil their meaning to some extent.
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> ...
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> I have said that a derogatory implication might be easy or difficult to detect; and, of course, it might not be detected at all, except by a person who was already in possession of some specific information. Thus, to say of a man that he was seen to enter a named house would contain a derogatory implication for anyone who knew that that house was a brothel but not for anyone who did not. In the passage I have quoted, De Grey CJ shed between this sort of implication and the implication that is to be derived from the words themselves without extrinsic aid, and he treats the term 'innuendo' as descriptive only of the latter. Since then the term has come to be used for both sorts of implication. Either sort had to be 'put upon the record,' as the Chief Justice said, and extrinsic facts had to be pleaded 'by way of introduction,' as he also said, or as a prefatory 'averment,' as it came to be called."

Again at page 279, the learned Law Lord said:

> This might be an academic matter if it were not for the principle that the ordinary meaning of words and the meaning enlarged by innuendo give rise to separate causes of action. This principle, which originated out of the old forms of pleading, seems to me in modern times to be of dubious value. But it is now firmly settled on the authority of *Sim v. Stretch* 52 TLR 669 and the House was not asked to qualify it. How is this principle affected by the new rule? Are there now three causes of action? If there are only two, to which of them does the innuendo that is inherent in the words belong? In *Grubb v. Bristol United Press Ltd.* [1963] 1 QB 309, the Court of Appeal, disagreeing with some observations made by Diplock LJ in *Loughans v. Odhams Press Ltd* [1963] 1 QB 299, decided in effect that there were only two causes of action and that the innuendo cause of action comprised only the innuendo that was supported by extrinsic facts.
>
> My Lords, I think, on the whole, that this is the better solution, though it brings with it a consequence that I dislike, namely, that at two points there is a divergence between the popular and the legal meaning of words. Just as the popular and legal meanings of 'malice' have drifted apart, so the popular and legal meanings of 'innuendo' must now be separated. I shall in the rest of my speech describe as a legal innuendo the innuendo that is the

> subject-matter of a separate cause of action. I suppose that it does not matter what terminology is used so long as it is agreed. But I do not care for the description of the popular innuendo as a false innuendo; it is the law and not popular usage that gives a false and restricted meaning to the word. The other respect is that the natural and ordinary meaning of words for the purposes of defamation is not their natural and ordinary meaning for other purposes of the law. There must be added to the implications which a Court is prepared to make as a matter of construction all such insinuations and innuendoes as could reasonably be read into them by the ordinary man.

The statement of claim in the present case pleaded both types of innuendo and, in respect of the legal innuendo, gave particulars. The learned Judge in a carefully considered judgment dealt with this aspect of the case as follows:

> Reading this article as a whole I find that it ridicules the plaintiff as a corporate figure who was involved in The Sun newspaper with the ulterior motive of furthering his own personal business interests and further carried the innuendo that he was unscrupulous in manoeuvering the editorial staff of the said newspaper by making them subordinate to his personal business interests. Further the article alleged that the plaintiff had reduced the said newspaper to be an in-house paper for the Berjaya Group. It is also alleged by the said article that the plaintiff had insisted that the said newspaper should not criticise his friends nor praise his enemies, which in my opinion carried the innuendo that the plaintiff was exploiting the said newspaper as a tool for his own commercial interests.

This finding by the learned Judge, in my opinion, amounts to a proper and judicial appreciation of the material that was presented to him.

I now turn to deal with the events as they transpired at the trial. The writ in these proceedings was served on the first appellant on 28 February 1994. Surprisingly, he did not file a defence to the action. It is quite obvious that he did not wish to treat this matter with the seriousness it demanded. That was, of course, entirely up to him. At the trial, the first appellant took the point that process had not been served on him personally. He was cross-examined about it. Indeed he put it forward as his very first ground of appeal. But when Encik Karpal Singh rose to address this Court on behalf of the first appellant, he abandoned this ground. Counsel had obviously satisfied himself that the writ had been properly served and that his client's instructions to the opposite effect, based upon which the first ground had been settled, was as good as carved on water.

Faced with the first appellant's default in delivering a pleading, the respondent had a choice. He could have entered interlocutory judgment and moved for an assessment of his damages. Alternatively, he could have set the action down for trial. He chose the latter course. In this he is supported by authority. It is the decision in *Nagy v. Cooperative Press Ltd.* [1949] 2 KB 188, which also concerned a libel action. The remarks of Cohen LJ (as he then was) when dealing with the precursor to O. 19 r. 7 are pertinent. This is what he said (at page 193):

> Order 27, r. 11, seems to me to be in its natural meaning permissive. I think the purpose of the rule was to provide a cheap method for the plaintiff to obtain in most cases the relief he seeks. But circumstances might well arise in which a real hardship would be inflicted on a plaintiff if he was compelled to proceed by a motion for judgment and could not exercise the right which he would otherwise have had of setting down the case for trial and letting it come on for trial in the usual way.

In my judgment a plaintiff in a libel action is not bound to enter default judgment. I certainly see no such compulsion in the language of O. 19 r. 7 of the Rules of the High Court, 1980. He is entitled to proceed and to set the action down for hearing for the purpose of vindicating

his reputation and to have his damages assessed. I do not think, that it lies in the mouth of a defendant who has publicly assailed a person's character to suggest that vindication ought not to be properly obtained.

The hearing of the action commenced on 10 October 1994, having been set down for trial pursuant to an order for directions made on 22 August 1994. It has been suggested that the action had come up for trial with undue haste. But this suggestion overlooks the fact that none but the second appellant had delivered a defence. If, in the ordinary way, there had been a motion or summons for judgment that would no doubt have come on much earlier and the very same result achieved with one important difference. The evidence of the respondent would in that event have been confined to an affidavit. The Judge would not have been able to see and gauge the respondent's demeanour and this may have well affected the size of the award. More importantly, the respondent would have lost the chance of denying the libel from the witness box, in the eye of the very same public before whom he was held up to ridicule. These are matters of practical concern to lawyers who practise in this area of the law.

The question then arises: should a plaintiff suffer delay in the vindication of his character because he chooses not to take advantage of a defendant's default in delivering his defence? I would answer that question in the most vehement negative. To my mind, it does not seem right that merely because a plaintiff in a libel action elects not to opt for a less expensive method provided by the rules of Court, he should be made to wait for several years in order to clear his name as against a defendant who displays little or no interest in the proceedings.

Considering the circumstances of the present case, I am entirely satisfied that there was nothing unusual about the time it took for this matter to come on for hearing. The suggestion, veiled or open, that this case came on earlier than other actions now pending trial before the same or different High Courts is most unfair and is only capable of being made by one who has no familiarity with the facts of this case or with the law governing the practice and procedure of libel actions.

I now turn to the complaint that the Judge refused a postponement of the trial and instead insisted on continuing it beyond the four days originally assigned to it. As I observed earlier, Encik Karpal Singh termed it as an "unholy haste". With respect, there is absolutely no merit in these complaints.

The record shows that on the first day of the trial, the first to the sixth defendants were represented by Encik Noor Zilan Mohamed Noor who, upon the case being called on, informed the Court that he was withdrawing as Counsel for, *inter alia,* the first appellant. The first appellant then asked for a postponement. That application was strongly resisted by Counsel for the respondent who said that his client would gave evidence that day. The first appellant then agreed to the trial proceeding. This was followed by a lengthy opening by Counsel for the respondent, after which the respondent commenced his evidence in chief the Court adjourned at 1.30 p.m., indicating that hearing would resume at 10.30 a.m. the following day. The trial then went on from day to day until its conclusion. At a very late stage of the proceedings Encik Karpal Singh appeared on behalf of the first appellant and conducted a cross-examination of some of the other defendants. His junior, Encik Manoharan made submissions on behalf of the first appellant. Later, after the respondent had replied to all the submissions made by each of the defendants, Encik Karpal Singh made a further

submission on behalf of his client. The very fact that the learned Judge allowed such a submission tells against any suggestion of unfairness. After reserving judgment for a few days, the learned Judge pronounced his oral decision in which he found for the respondent to the extent already indicated. Shortly thereafter, he handed down his written reasons. He has been criticised for doing this.

Now, a Judge who has scheduled a case for a limited number of days is entitled to proceed beyond in order to complete the trial. Indeed, I would go so far as to say that for several reasons it is desirable that such a course be adopted in all cases. The adjournment of a case that is partially heard causes much inconvenience to all concerned and places a strain upon an already overworked memory. There is the problem of recalling the evidence. It is far better to get on with a case while the evidence is still fresh in one's mind rather than grapple with vague recollections of a witness' testimony. Then, there may be some difficulty about the exhibits: whether any were marked for identification or actually produced. If produced, it may be difficult to recall which witness produced it and to what purpose. Counsel on one side may have said he would verify some point and then may have forgotten about it altogether. It is best, in order to avoid all these difficulties, that trials be proceeded with to their conclusion instead of being adjourned mid-stream.

The grant or refusal of an adjournment is a matter within the pure discretion of a Judge having control of the proceedings and this Court ought not to interfere with such a decision unless it can be demonstrated to a conviction that the refusal resulted in the deprivation of essential justice from the appellant. On occasions such as this I cannot help but recall to mind the speech of Lord Templeman in *Ashmore v. Corp Lloyd's* [1992] 2 All ER 486. This is what he said (at page 493):

> The parties and particularly their legal advisers in any litigation are under a duty to co-operate with the Court by chronological, brief and consistent pleadings which define the issues and leave the Judge to draw his own conclusions about the merits when he hears the case. It is the duty of Counsel to assist the Judge by simplification and concentration and not to advance a multitude of ingenious arguments in the hope that out of ten bad points the Judge will be capable of fashioning a winner. In nearly all cases the correct procedure works perfectly well. But there has been a tendency in some cases for legal advisers, pressed by their clients, to make every point conceivable and inconceivable without judgment or discrimination. In *Banque Financiere de la Cite SA v. Westgate Insurance Co, Ltd* [1990] 2 All ER 947 at 959, [1991] 2 AC 249 at 280-281 I warned against proceedings in which all or some of the litigants indulge in over-elaboration causing difficulties to Judges at all levels in the achievement of a just result. I also said that the appellate Court should be reluctant to entertain complaints about a Judge who controls the conduct of proceedings and limits the time and scope of evidence and argument. So too, where a Judge, for reasons which are not plainly wrong, makes an interlocutory decision or makes a decision in the course of a trial the decision should be respected by the parties and if not respected should be upheld by an appellate Court unless the Judge was plainly wrong. The Court of Appeal in the instant case did not comment upon and apparently therefore found nothing remarkable in the points of claim or the length of the plaintiffs' opening or in the prospect of protracted oral evidence and interminable submissions based on that oral evidence. The Judge thought he would be assisted by an early deliberation of issues of law, whatever the result of that consideration. He deserved support. In his judgment in the Court of Appeal Ralph Gibson LJ recorded that the plaintiffs had resisted the application to Gatehouse J by Lloyd's for a determination of preliminary issues on many grounds in addition to the two specific grounds of objection to which I have referred. Mr. Lyndon-Stanford repeated the arguments in the Court of Appeal and as Ralph Gibson LJ remarked:

> He claimed in particular that it was wrong thus to take the conduct of the proceedings out of the hands of the plaintiffs and thereby to disappoint the plaintiffs in their legitimate expectation that the trial would proceed to a conclusion upon the evidence to be adduced.
>
> Ralph Gibson LJ thought that there was 'considerable force in those submissions'. My Lords, I disagree; the control of the proceedings rests with the Judge and not with the plaintiffs. An expectation that the trial would proceed to a conclusion upon the evidence to be adduced is not a legitimate expectation. The only legitimate expectation of any plaintiff is to receive justice. Justice can only be achieved by assisting the Judge and accepting his rulings.

Although *Ashmore* was a case in the Commercial Court of the Queen's Bench Division and the reference in Lord Templeman's speech is to the legitimate expectation of plaintiffs, it is my respectful opinion that the views there expressed apply to litigants generally. In my judgment, the only legitimate expectation a defendant has is that he will obtain justice according to law. Unless a trial Judge has acted wrongly in the conduct of a case according to its peculiar and particular circumstances, this Court should not interfere with any procedural directions he may give for the speedy and convenient disposal of a case. It is erroneous to think that justice is only obtained when a trial is dragged on beyond human endurance. Litigants and their legal advisers must remember that Judges generally, and in particular Judges at first instance, are in the business of hearing and disposing cases expeditiously; not in prolonging the agony of hapless litigants.

Adopting this approach to the facts of the instant appeal, I am entirely satisfied that the learned Judge acted correctly in directing the trial to proceed to completion, in handing down an early decision and in making available his written reasons shortly thereafter, thus enabling a speedy prosecution of this appeal. In fairness to the learned Judge I must say that in the light of the circumstances surrounding the case, his conduct of the proceedings is beyond reproach.

Thus far, I have refrained from addressing the principal cause of action mounted by the respondent. I think it appropriate to deal with it now. But I shall not dwell upon it at length. Although the memorandum of appeal does contain a ground of appeal that challenges the correctness of the learned Judge's finding on this point, no argument was directed in its support.

The main thrust of the respondent's case against the instant appellants is that they conspired to defame him. He relied on the several articles being systematically published in the magazine in question. The learned Judge, faced with no pleading from the defendants (save the second appellant) was not unduly troubled about it. He directed himself upon this issue in the following terms:

> As I have stated earlier there appears to be a relativeness, a linkage and a common sting between those articles. The articles by the second and third defendants are on the same issues and the articles written by the fourth and fifth defendants are also of the same issues though different from the articles written by the second and third defendants. It appears to me that there has been a concerted agreement between and among the defendants of a predominant intention to injure and damage the plaintiff's personal and commercial reputation and personal career by the publication of the four defamatory articles in question which in fact has caused irreparable injury, harm and damage to the plaintiff. This is the common link in all the four articles. However, applying the principle in the case of *Ward v. Lewis* [1955] 1 WLR 9 the tort of conspiracy merges with the tort of defamation.

That, in my judgment, is a proper direction in law and upon the proved facts. Conspiracy is a tort that is not always capable of proof by direct evidence. Like so many other facts, an agreement to do an unlawful act or a lawful act by unlawful means may be established by evidence of circumstances from which such an agreement may be inferred: *Barindra Kumar Ghose & Ors v. The Emperor* [1909] 14 CWN 1114. It is axiomatic that there must be proof and not mere conjecture. In the present case there was sufficient evidence from which a conspiracy could be properly inferred. The learned Judge was therefore right in drawing the inferences he did. In this state of affairs it is not surprising that the ground of appeal directed upon this point was not pursued.

It is convenient at this stage to deal with the submissions of Encik Shamsul Baharain on the issue of the liability of the third and fourth appellants before I come to consider the all important argument on the quantum awarded by the learned Judge.

Encik Shamsul submitted that the learned Judge was wrong in holding his clients liable and that this Court could and should interfere with that conclusion. I must confess my own inability to understand how this was to be done when there was no joinder of issue on the question at all by the delivery of a defence. No authority was cited by Counsel in support of the rather startling proposition that he advanced. I am of the view that the preposterousness of the argument furnishes its own answer. Consequently, I have not the slightest hesitation in rejecting the argument of Counsel on this point. I think that it is well settled practice that a defendant who elects not to plead to a statement of claim in a libel action is confined only to challenging the measure of damages which the plaintiff ought to receive. I think that it was overlooked all round that a defendant in a libel action may deliver his defence out of time and indeed at any time before, judgment in default is signed. Such a defence is not, and cannot be treated as a nullity: *Gill v. Woodfin* [1884] 15 Ch. D. 707*; Montagu v. Land Corporation* [1887] 56 LT 730.

In view of the respondent's decision not to enter interlocutory judgment in default, it was open to Encik Shamsul's clients to have put in their defence at the eleventh hour. Had they done so, the learned Judge would have been under a duty to consider it. But all this is academic because this course was not resorted to. Encik Shamsul's belated attempt to reopen the issue of liability amounts to closing the stable doors after the horse has bolted: it is of no avail.

There now remains for consideration the measure of damages awarded by the learned Judge, which all appellants submit is excessive. Encik Shamsul in addition to attacking the size of the award, also submitted that the learned Judge had erred in assessing damages separately against each defendant. I shall address the latter complaint after having considered the more important and careful submissions of Encik Karpal Singh upon the issue of quantum.

Encik Karpal Singh began with the proposition that the burden of proving loss lay squarely upon the respondent. Although libel it may be, and publication there was, no loss was proved to have been suffered by the respondent: so went the argument. In support of this submission, Counsel cited a passage from *Kameswara Rao's Treatise on the Law of Damages And Compensation*, 5th edition, Volume 3. It is a well respected work upon the subject. The passage relied on by Counsel appears at page 2292 and reads as follows:

> Although damage is presumed in an action, for defamation, and it is not necessary for the plaintiff to give any evidence of damage, proof is often allowed of the actual damage obtained, with the twofold object of enabling him to strengthen his case and of placing before the jury proper material for estimating the damages. So, where the plaintiff had been held up to ridicule

> by means of publication in a newspaper, he may although be entitled to rely upon the probable injurious consequences likely to cause from such publication, be allowed to show that the publication had in fact led to his being laughed at by particular individuals. So also, where the plaintiff is defamed in his trade or business, it is competent for him to prove a general falling off in custom even though he does not allege it in his pleadings. Where the declaration stated that, in consequence of the libel, the plaintiff lost the profits of certain performances at his theatre, the plaintiff was allowed to ask a witness 'whether, the receipts of the house had not diminished' but not 'whether particular persons had not in consequence given up their boxes'. Similarly where the action was for libelling a ship, the shipowner was allowed to give in evidence the amount to which the profits of the next voyage had fallen below the average as consequence of a libel. In all these cases, the particular kind of evidence was admitted in order to show that what the law will presume to happen, has actually happened. 'It is not special damage, it is general damage resulting from the kind of injury sustained.

With respect to Counsel, the passage he has relied on merely states the rule governing the admissibility of evidence to show the extent of the harm suffered to one's reputation. But it does relate to the proof of general damages.

Libel is a tort actionable *per se*, i.e., without proof of actual harm. In other words, damage is not an ingredient of the tort. The law presumes that when a man's reputation is assailed, some damage must result. Evidence about the extent of that damage is admissible. But evidence that purely speculates is not. That, in a gist, is the effect of the passage cited.

In the instant appeal, only the respondent gave evidence of the extent to which his reputation had suffered by reason of the several libels upon him. He was cross examined about it. Counsel submits that the respondent's testimony contains mere assertions which amount to nothing. He says that it was incumbent upon the respondent to lead evidence to support that claim and cites the recent decision of the Federal Court in *Tan Sri Khoo Teck Puat & Anor v. Plentitude Holdings Sdn. Bhd.* [1994] 3 MLJ 777, where Edgar Joseph Jr. FCJ said (at page 784):

> Firstly, that part of the judgment which provides that the vendor shall pay to the purchaser damages to be assessed for wrongful termination of the agreement with costs and that Tan Sri Khoo and the vendor shall pay to the purchaser damages to be assessed for breaches of the undertakings, even though affirmed on appeal, can in no way relieve the purchaser of satisfying the fundamental requirement of having to prove its loss (if any) arising from those breaches. To hold otherwise would amount to dispensing with proof of quantum altogether, and that cannot be the law. In so saying, we are reminded of the words of Lord Goddard in *Bonham-Carter v. Hyde Park Hotel Ltd* 64 TLR 177 at p 178:
>
> > ...plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, so to speak, throw, them at the head of the Court, saying: 'This is what I have lost, I ask you to give me these damages'. They have to prove it.

This dictum was referred to and applied by our Court of Appeal in *John v Dharmaratnam* [1962] MLJ 187. *John v. Dharmaratnam (supra)* was a case of libel. Good JA dealt with the damages which, Encik Karpal Singh says, applies to the facts of the present appeal:

> The appellant who was the plaintiff in the Court below was awarded RM500 damages for the injury to his reputation which the law presumes in the case of a libel on a man in the way of business, trade or profession **but in addition he claims damages for particular pecuniary losses which he attributes to the fact of the libel.** The learned trial Judge considered this question and considered it with some care. The appellant has submitted that the Judge misdirected himself in two respects, one of

which is a negative one and the other a positive one: that he did not take into account these losses from the plaintiff's business in assessing damages, and that he did take into account a number of other matters which he considered might have been responsible for these losses. Speaking for myself I do not think that the appellant established any connection between the publication of the libel by the defendant and the loss of revenue from his business which occurred after that publication. He no doubt could, and learned trial Judge thought he should, have adduced evidence if indeed the losses were due to the libel.

(emphasis added)

His Lorship having referred to the judgment of Lord Goddard in *Bonham-Carter* (*supra*) continued:

In all the circumstances I am of the opinion that **the learned trial Judge was correct in not awarding any sum specifically for these alleged losses of income and that leaves us with the $500 general damages**. Again, speaking for myself, I would have awarded that amount or more or less but I cannot see that there is any manifest error in the amount awarded and I would not be disposed to interfere with the amount so awarded. I would therefore dismiss the appeal with costs." (Emphasis added).

As to the manner in which the respondent ought to have proved his damages, Counsel referred this Court to two cases. The first is the decision of the Court of Appeal in *Lewis v. Daily Telegraph* [1962] 1 All ER 698; the second is *Calvet v. Tomkies* [1963] 3 All ER 610. In *Lewis (supra)* the following passage in the judgment of Holroyd Pearce LJ (at pages 714-5) was read to us:

If a person libelled has suffered specific damage, he can plead it as special damage and recover it. That claim will then have the advantage (or disadvantage) of a careful scrutiny, supported by documents and oral evidence from which a Court can decide whether in truth a decline of business resulted from the libel. The plaintiffs would then have to give particulars and facts and figures to support it. The plaintiffs or their accountants could produce figures of turnover and graphs showing any sudden downward tendency, such as, for instance, that, in the week' after the libel, orders noticeably declined and so forth. Managers, salesmen and others could give supporting evidence. Evidence could be called to show that the price of the shares in the stock market had declined; and the defendants would have an opportunity of calling evidence to counter the plaintiffs' claim for special damage. The plaintiffs did not take this course.

They did not plead any special damage. But, even though a plaintiff pleads no special damage, he may rely on a general loss of business if the words were 'in [their] very nature ... intended or reasonably likely to produce ... a general loss of business' *(Ratcliffe v. Evans* [1892] 2 Q.B. at p. 533). **That is a reasonable way of dealing with some general loss from a libel which can reasonably be inferred and cannot be proved.** Nevertheless, if large sums are to be attributed to loss of business from a libel, it is plainly desirable that they should be pleaded, particularised and so far as possible supported by evidence. No evidence of financial damage was given in chief.

(Emphasis added).

The passage in the judgment of Russell LJ in *Calvet v. Tomkies (supra)* is to be found at page 613 of the report and it reads as follows:

Under both the libel and the injurious falsehood heads of claim, it seems to me that the fact that the plaintiff is a film actress in order to earn money is relevant both to the quantum of damages as well as to the cause of action. This relevance exists because of a potential loss of earnings. **But if evidence of actual loss of earnings or decline in business, even without any figures mentioned, is to be put forward in a case such as this, I for my**

> **part, as at present advised, am inclined to think that it should be pleaded with consequential discovery.** Beyond that rather general observation, I agree that it would be quite wrong to attempt to define what questions may or may not be asked or answered at the further trial.
>
> (Emphasis added).

No quarrel may be had with these pronouncements that have fallen from very eminent Judges. But they do not support Encik Karpal Singh's argument. One has really to look at the context in which they were made. The short answer to the submission of Encik Karpal Singh is that the principle contended for applies to the proof of *special* and not *general* damages. That comes across quite clearly from the all the decisions cited to us by Counsel. I would also call to attention those passages upon which I have placed emphasis which tell against the proposition advanced by the first and second appellants.

Encik Lingam who appeared for the respondent drew attention to the fact that in the present case, no claim for special damages was ever made. The only claim was for general damages and it is purely those damages which the learned Judge assessed. In my view, the complaint that these are excessive is quite another matter that has to be separately addressed.

Counsel for the respondent, in answer to the submission made on behalf of the appellants, relied on the following passage in *Lachman v. Pyarchand* AIR 1959 Raj 169, at 175 which, in my view, correctly states the law:

> In the second place, the learned Civil Judge seems to have thought that the plaintiff had failed to prove the damages claimed by him and therefore he was not entitled to receive any. Now, so far as this aspect of the case goes, I desire to say, first that damages are of two kinds: general and special, and the learned Civil Judge does not appear to have appreciated the distinction between them, and, second, that while special damages are required to be specifically pleaded and proved general damages are not.
>
> General damages are damages which the law presumes to flow from, and as it were be the natural and probable consequence of the defendants' act. Therefore general damages need not be specifically nor need any evidence be produced to prove them as such. I have no doubt that having regard to the pleading of the plaintiff in the present case, what he really claimed was general and not special damages.
>
> That being so it was not necessary for him to produce evidence to prove them. The learned Civil Judge was, therefore, wrong in thinking that no damages could be awarded to the plaintiff in this case because he had not really suffered any or he had failed to prove them.

As I earlier said, the respondent was the only witness called to prove his case. The learned Judge appears to have accepted that evidence. In my judgment, based on the authorities referred to, there was no necessity for the respondent to call other witnesses to prove his general damages. He may have reinforced his case by calling other persons. He took the risk of not doing that. As it happened, he was proved right.

In addition to the decisions cited by Counsel, I would also refer to s. 134 of Evidence Act, 1950 which is, in my opinion, relevant to the point under consideration. That section is in the following terms:

> 134. No particular number of witnesses shall in any case be required for the proof of any fact.

In *Vadivelu Thevar v. State of Madras* AIR 1957 SC 614, Sinha J., when delivering the unanimous decision of the Indian Supreme Court, drew attention to the material differences between English law on the subject and the law as enacted in s. 134 of the Indian Evidence Act, 1872 (which is identical to our s. 134), and said (at page 619):

> The Indian Legislature (and I might add the Malaysian Parliament) has not insisted on laying down any such exceptions to the general rule recognized in s. 134 quoted above. The section enshrines the well recognized maxim that 'Evidence has to be weighed and not counted.' Our legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon.

Again in *Ram August Tewari & Ors v. Bindeshwari Tewari & Ors* AIR 1972 Pat. 142, at page 144, the Court made this important observation:

> The evidence of every witness is to be judged on its own merits and if there is nothing in his evidence or in the evidence of other witnesses examined in the case to discredit him, it cannot be disbelieved on the ground that there is only one witness on the point and no other witness has been examined to support him.

The foregoing statements of principle are, in my judgment, a sufficient answer to the arguments advanced by the appellants. Nevertheless I would add my own views to those already expressed in the several authorities cited.

It must be borne in mind that when it comes to the quality of evidence, each case depends upon its own facts. In some, it might be a foolish not to call further evidence; in others it may be unnecessary. The venom with which the respondent was attacked by the first appellant in his article coupled with the respondent's status in society are sufficient *indicia* of the extent to which harm was suffered. The learned Judge thought along the same lines and he was night in the approach that he took. So the first appellant's point about the damages not having been proved comes to naught.

The next point that calls for consideration is the size of the award. But there are some general observations that I wish to make upon the question of the assessment of damages in defamation cases in this country before I deal with the judgment of the learned Judge on this point.

First, it must be borne in mind that unlike some other Commonwealth jurisdictions, including England, actions for defamation in Malaysia are tried, not by a Judge and jury but by a Judge alone. In this we stand on common ground with such countries as India, Singapore and all the States of Australia, save New South Wales. However, the mode of trial that we have chosen for ourselves produces certain consequences. A jury does not, and is not required by law, to give reasons for its decision. A Judge, on the other hand, is obliged to provide reasons for each and every decision he hands down. His reasoning has not only to meet reasonable standards of logic but also contain correct propositions of law. If his conclusions and the reasons for them are found to be wanting in either of these respects, any judgment rendered by him is liable to correction by the appellate process.

Secondly, it flows from what I have said about the requirement of a Judge properly directing himself upon the law, that he must not only state the law correctly upon the issue of liability but also upon the issue of damages. Now, at first blush this may appear to be a statement of the trite and the obvious. But I do so in order to demonstrate the important and indeed the vital difference when it comes to directing a jury upon the issue of the amount of damages a plaintiff ought to recover. For, it is settled law and practice in libel actions

tried with a jury that a Judge does not give **any** direction or guidelines as to the assessment of quantum. This settled practice finds mention in the speech of Lord Diplock in *Cassell & Co Ltd. v. Broome* [1972] AC 1027, where, at page 1125, he said:

> It may seem remarkable that there had not previously been any judicial analysis, even as elementary as this, of the constituent elements of the compound 'damages at large.' But it has to be remembered that at common law the assessment of damages was the exclusive function of a jury, and, despite growing exceptions from the mid-nineteenth century onwards, nearly all actions for torts in which damages were at large were tried by jury until after 1933. The assessment of damages was an arcanum of the jury box into which Judges hesitated to peer; and **it does not appear to have been their practice to give any direction to the jury as to how they should arrive at the amount of damages they should award, beyond some general exhortation to do their best in a matter which was peculiarly within their sphere,"** (Emphasis added).

Thirdly, it is a natural consequence of the practice to which I have just alluded that there is warrant to rely on the guidelines for the assessment of damages appearing in non-jury jurisdictions such as India and Singapore, although this is a matter upon which our Courts must evolve their own criteria based upon our own values and upon the conditions that prevail here.

Fourthly, I do not think that it can be argued with any confidence that there is, in our jurisdiction, a line of cases that may be said to represent or even resemble a discernible trend of authority upon the quantum of damages that are to be awarded in libel actions. There are certainly no comparables unlike those which exist in personal injury cases. That, I think, effectively disposes of the argument of Counsel that the award in the present case is out of line with the trend of damages that are usually awarded in libel actions.

Fifthly, my reading of the Malaysian authorities upon the subject of damages in tort actions, leaves me with the distinct impression that they tend to regard a person's limb to be worth more than his or her reputation. I would refer in particular to *Wan Abdul Rashid v. S. Sivasubramanian* [1984] 1 MLJ 385, where a sum of RM5000 was awarded for slanderous remarks against a judicial officer; *Ng Cheng Kiat v. Overseas Union Bank* [1984] 2 MLJ 140, where a sum of RM500 was awarded for the dishonour of a cheque and *Great One Coconut Products Industries (M) Sdn. Bhd. v. Malayan Banking Bhd* [1985] 2 MLJ 469, where a sum of RM15,000 was awarded for the wrongful dishonour of a cheque issued by a trader.

I must record my strong disapproval of any judicial policy that is directed at awarding very low damages for defamation. That is not to say that low or even nominal damages may not be awarded in particular cases, for example, where a plaintiff is without any or any worthwhile reputation. But I do hold the view that injury to his reputation may occasion him at least as much, if not greater, harm than injury to his or her physical self. No one, least of all a journalist, should rest in the comfort that a person's reputation may be injured with impunity on the footing that the consequence would be the payment of a few thousand ringgit in damages. Small or insignificant awards by Courts in libel actions will certainly provide that comfort. As I indicated to Counsel in the course of argument, the time has arrived for this Court to send a strong and clear signal to all and sundry that libel does not come cheap.

It is a cardinal error to think that there is absolutely no element of punishment even in an award of compensatory damages. As was observed by Lord Wilberforce in *Cassell & Co v. Broome (supra)* at page 1114:

> It cannot lightly be taken for granted, even as a matter of theory, that the purpose of the law of tort is compensation, still less that it ought to be, an issue of large social import, or that there is something inappropriate or illogical or anomalous (a question begging word) in including a punitive element in civil damages, or, conversely, that the criminal law, rather than the civil law, is in these cases the better instrument for conveying social disapproval, or for redressing a wrong to the social fabric, or that damages in any case can be broken down into the two separate elements.

In expressing my disagreement with any attempt to equate injury to reputation and physical injury, I have kept in mind the decision of the High Court of Australia in *Carson v. John Fairfax & Sons Ltd.* [1993] 113 ALR 577 but have arrived at my own conclusions despite it. The relevant passage in the judgment of the High Court in *Carson* appears at pages 586-587 of the report and reads thus:

> In any event, we do not accept the appellant's argument that *Coyne* (the reference here is to the decision in *Coyne v. Citizen Finance Ltd.* [1991] 172 CLR 211) prohibits an appellate Court, deliberating on the quantum of a defamation verdict, from considering verdicts in personal injury cases for the purpose of comparison. It is true that, in that case, Dawson and McHugh JJ expressed agreement with the judgment of Toohey J in the course of which his Honour stated that the adequacy of awards in one type of case should not be tested by reference to awards in the other. *Coyne,* however, is not a binding decision in the circumstances of this case. *Coyne* dealt with the question whether or not the jury were wrongly directed as to whether they could take into account awards in other types of cases when deciding upon a verdict. Here the alleged error is the comparison said to be made by an *appellate Court* between verdicts in different types of cases.
>
> In *Coyne,* Mason CJ and Deane J considered that it is legitimate for an appellate Court considering an appeal against the quantum of damages in a defamation case to bear in mind 'the scale of values' applied in dealing with appeals in cases of serious physical injury. There is no occasion here to repeat the reasoning advanced in support of that conclusion. That conclusion does not deny that the harm suffered in defamation cases differs from the 'tearing of flesh and bone and the pain of body' suffered in personal injury cases nor that *'precise* comparisons' should not be drawn between the different types of cases. But for an appellate Court which must test the quantum of a defamation award against some criteria to be prohibited from considering awards of general damages in personal injury cases would exclude reference to a potentially relevant contention. In *Andrews v John Fairfax & Sons Ltd* [1980] 2 NSWLR 225, at 245 Hutley JA stated:
>
> Lord Halisham has pointed out in *Cassell & Co Ltd v Broome* '...it is not necessarily fair to compare awards of damages in this field with damages for personal injuries; but this does not justify disregarding all the comparisons. Diplock LJ said in *McCarey v Associated Newspapers Ltd (No 2)* [1965] 2 QB 86, at 109: 'I do not believe that the law today is more jealous of a man's reputation than of his life and limb; and went on to compare the damages approved in recent accident cases in the Court of Appeal, concluding with the following remarks: 'It is, I think, legitimate as an aid to considering whether the award of damages by a jury is so large that no reasonable jury could have arrived at that figure if they had applied proper principles to bear in mind the kind of figures which are proper, and have been held to be proper, in cases of disabling physical injury.

That statement accords with the observation made by Mason CJ and Deane J in *Coyne:*

> ...it seems to us that it would be quite wrong for an appellate Court, entrusted with hearing appeals in both defamation and personal injury cases, to be indifferent to the need to ensure that there was a rational relationship between the scale of values applied in the two classes of case.

a And the foundation of that relationship must be the scale of awards for general damages in cases of serious physical injuries which, in their severity and disabling consequences, transcend injury to reputation.

Sixthly, in appropriate cases, the profession or standing of the defendant in society is a relevant factor which a Court is entitled to take into account when considering what damages it should award against him. In most cases, this factor may inevitably be connected with the b extent of the publication. And there will no doubt be original differences within the same class of defendants. I will explain in a moment why this is so.

A professional journalist of international repute and the first appellant, by his own admission made during his evidence, comes within this category - will no doubt have a wider following of readers. The libellous attacks that he levels against others will carry greater weight and c create belief as to the truth of the charges he makes than an article written by, say, a cub reporter who has joined the profession only of late. Both he and the newcomer owe a duty to speak the truth; but the responsibility upon the former is surely greater than that which lies upon the latter.

Therefore, in the absence of circumstances, it would be quite proper for a Court to award substantial damages against a journalist who has, without any or any sufficient basis, taken d a plea of justification. And the wider his readership or popularity, the greater should the award be. The purpose of such an award is, of course, to remedy the harm the particular journalist causes to a plaintiff by his irresponsible dissemination of false material.

I find support for the view that I have expressed from the following passage in the judgment of Fforde J. in *Khair-ud-Din v. Tara Singh* AIR 1927 Lah. 20, at page 23:

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> With regard to these observations I may say that it is the duty of a journalist only to publish complaints which he is satisfied are true. If he publishes complaints of a defamatory nature which are not true he must suffer the consequences. A journalist who publishes a statement about an individual is in the eyes of the law precisely in the same position as any other person. He is not specially privileged as to what he may say. **But on the earlier hand he undoubtedly has a greater responsibility to guard against untruth, for the** f **simple reason that his utterances have a far larger publication than have the utterances of the individual and they are more likely to be believed by the ignorant by reason of their appearing in print.** (Emphasis added).

Lastly, a Court is entitled, and should have regard to the conduct of a defendant in a libel action. That conduct extends from at least the date of publication of the libel although there may be cases where conduct antecedent to the publication may become g relevant until the final speeches at the trial. Such conduct will have a bearing in the making of an award for exemplary damages. This area of the law is so well covered by the decisions in *Rookes v. Barnard* [1964] AC 1129 and in *Cassell (supra)* that no repetition of it here is called for. It may be mentioned here that the learned Judge in the present case did direct his mind to the relevant passages in the speeches delivered in *Cassell*.

h With that, I now turn to consider the approach taken by the learned Judge in this case, who, when he came to assess damages, had this to say:

> In my opinion each case must be judged on its own particular facts and on its own merits. In the present case a very serious libel has been perpetrated on the plaintiff. The defendants calculated that the prospect of material advantage from publishing the said articles outweighed the prospects of material loss.

i

Therefore, bearing in mind the principles applicable in tile assessment of damages and in considering all the various factors including the following:

(1) the position and standing of the plaintiff,

(2) the gravity and seriousness of the libel;

(3) the mode and extent of the publication;

(4) the mental distress, hurt, anxiety and mental anguish caused to the plaintiff as a result of the libel;

(5) the uncertainty undergone in litigation;

(6) the conduct of the defendants from the time of the libel down to the very moment of the verdict; and

(7) the absence or refusal of any correction, retraction or apology,

this Court finds that the award must also be sufficient to convince any person of the baselessness of the libel and act as a necessary and sufficient signal to the public at large of the full vindication of the plaintiff's reputation both in Malaysia and internationally. Taking the above into consideration, I am of the view that the damages to be awarded against each defendant must be treated individually.

The learned Judge then proceeded to take into account all the factors alluded to in the passage in his judgment that I have reproduced and awarded those damages which I have set out earlier in this judgment. He also took into account the conduct of each appellant. The learned Judge therefore gave due consideration to all those factors that are relevant to the assessment of damages in a case such as this. His judgment has been reported in [1995] 1 MLJ 39. For that reason I do not propose to regurgitate his careful analysis of the evidence as against each appellant and their conduct.

As I have said, Encik Karpal Singh complains that the award against his clients is exorbitant. He has referred us to the award of S$130,000 made by Chua J. in *Lee Kuan Yew v. J. B. Jeyaratnam* [1979] 1 MLJ 281, which was affirmed at all appellate levels, and attempted to draw a comparison between that case and the present. But the vital difference between *Lee Kuan Yew (supra)* and the present appeal lies in the fact that no plea of justification was taken by the defendant Jeyaratnam. In the present case, the second appellant expressly placed a plea of justification on record with no material in support. And, in the case of the first appellant, although he did not deliver a defence, he did conduct a cross-examination of the respondent on the footing that the facts appearing in his article were true. Additionally, when he gave evidence, he said:

In this article at page 9 of Exhibit PI - my defence is justification

And under cross-examination, he gave the following answers:

Q: Are you able to substantiate in Court that Tan Sri Vincent Tan obtained contracts from Dato' Samy Vellu?

A: No

Q: Do you have any evidence that Tan Sri Vincent Tan applies for contracts from Dato' Samy Vellu?

A: No.

Q: Why did you say that Tan Sri Vincent was interested to apply for contracts

A: It is only from my information.

The stance taken by the first and second appellants weighed heavily upon the mind of the learned Judge, and, I might add, rightly so.

Now, I must confess that my own limited researches into this area of the law has not produced any local or Singapore decision upon the consequences that follow where a plea of justification had been taken in vain. But, I have always understood the maxim in the law of libel to be: "Damages multiply when justification fails." And the judgment of Lord Denning in *Associated Leisure Ltd. v. Associated Newspapers Ltd.* [1970] 3 WLR 101 which was cited by the learned Judge does, I believe, bear out this proposition.

Accordingly, in my opinion, the learned Judge was, in the circumstances of this case, entitled to award large damages, compensatory, aggravated and exemplary. Indeed, the authorities that I have had the advantage of perusing demonstrate that the approach taken by the learned Judge is correct. I do not think that it is necessary to undertake a copious citation of passages from all the relevant cases. It is, however, necessary to refer to some of them which, in my view, provide valuable guidance upon the subject.

The first of these is the judgment of Misra J in *Sadasiba Panda v. Bansidhar Sahu* AIR 1962 Orissa 115 in which there appears the following passage (at page 117):

> Every man has his own status, however humble, and he has a right to guard his reputation whatever it is, and the question of status is only relevant in measuring the question of compensation, and not in deciding as to whether there has been actual defamation in a case of a libel.

The next is the following passage from *Carson (supra):*

> Specific economic loss and exemplary or punitive damages aside, there are three purposes to be served by damages awarded for defamation. The three purposes no doubt overlap considerably in reality and ensure that 'the amount of a verdict is the product of a mixture of inextricable considerations: *Uren v. John Fairfax & Sons Pty Ltd.* [1966] 117 CLR per Windeyer J at 150. The three purposes are consolation for the personal distress and hurt caused to the appellant by the publication, reparation for the harm done to the appellant's personal and (if relevant) business reputation and vindication of the appellant's reputation. The first two purposes are frequently considered together and constitute consolation for the wrong done to the appellant. Vindication looks to the attitude of others to the appellant: the sum awarded must be at least the minimum necessary to signal to the public the vindication of the appellant's reputation. 'The gravity of the libel, the social standing of the parties and the availability of alternative remedies' are all relevant to assessing the quantum of damages necessary to vindicate the appellant.

The third and final passage that merits reproduction is that appearing in the judgment of Bouck J in *Neeld & Ors v. Western Broadcasting Co. Ltd.* [1976] 65 DLR 574, at 576. It reads:

> As I understand the law the measure of damages must bear some relation to the actual standing and reputation of the plaintiffs in the community prior to the libel. The higher the reputation the greater the damages. Of course the precise nature of the libel is also relevant. A person with a poor reputation is not defamed if the truth is told of him. **The more the libel gets away from the truth the greater is the effect on the award of damages.** The closer the libel is to the truth the less the damages must be. (Emphasis added).

Having regard to the facts of this case, I am unable to say that the learned Judge's award against the first and second appellants is either excessive or exorbitant. This is, therefore, not a case that comes within the scope of appellate interference. In accordance with well

recognised principles, this Court should not interfere with the exercise of discretion upon a matter where opinions can, and do, vary quite widely. I am therefore unable to agree with the submissions of Encik Karpal Singh on this point.

I now turn to deal with the submissions advanced on behalf of the third and fourth appellants. So much of Encik Shamsul's argument that was directed against quantum has, with the exception of one point, been sufficiently answered by all that I have said when dealing with the submissions made on behalf of the other two appellants. The one point that is special to Encik Shamsul's case rests upon what he says is the publication by his clients of an apology at the earliest available opportunity.

In order to properly appreciate this aspect of the case, it is necessary to advert to some of the relevant chronology. It may be recalled that the offending articles appeared in the August 1993, October 1993 and January 1994 issues of the magazine in question. The letter before action in this case was written on 3 February 1994. It contains the usual demand for the publication of an apology in terms to be approved by the respondent's solicitors. It is common ground that no draft of an apology was ever sent by Encik Shamsul's clients to the respondent's solicitors for approval. Instead, the third and fourth appellants took it upon themselves to settle the terms of what has been termed by Counsel as an apology. It appeared on page 4 in the March issue of the magazine under the column headed "Letters To The Editor" and reads as follows:

> MI Apologises To Vincent Tan
>
> We, Media Printext (M) Sdn. Bhd. and Editor-in-Chief Haji Hasan Bin Haji Hamzah, on behalf of the staff and management responsible for the publication of the following articles:
>
> (i) 'Vincent Tan's Media Forays' reported by Soh Eng Lim in the August 1993 issue of Malaysian Industry;
>
> (ii)'Press Manoeuvers' reported by M.G.G. Pillai in the October 1993 issue of Malaysian Industry;.
>
> (iii) 'Berjaya Industrial/Textile Shares Sale Unanswered Questions?' reported by V. Thavanesan in the January 1994 issue of Malaysian Industry and
>
> (iv) 'Financial Analysis/Probing Berjaya Textile' reported by Dr. Barjoyai Bardai in the January 1994 issue of Malaysian Industry.
>
> Do hereby with deep regret tender our apology for any inconvenience caused to Tan Sri Dato' Vincent Tan Chee Yioun and that it was highly irresponsible for us to publish such articles as stated hereinabove and we further apologise **if** the said articles tarnished the reputation of Tan Sri Dato' Vincent Tan Chee Yioun and further covenant that we shall forthwith cease and refrain from publishing, circulating and distributing in any form or manner any words or statements that might be injurious to the reputation of Tan Sri Dato' Vincent Tan Chee Yioun.
>
> The Publisher and Management Malaysian Industry (Emphasis supplied).

Encik Shamsul submitted that this was a sufficient apology in law and that the learned Judge was wrong in not treating it is as such. Of course, if Counsel is right in his submission, then, according to well established principles, the measure of damages awarded against the third and fourth appellants would have to be reduced to reflect their contrition.

An apology, although not exonerating a defendant, has the effect of reducing, and in some cases substantially reducing, the quantum of damages. The corollary of this proposition is

that where the purported apology in effect aggravates the libel, a Court will be entitled to award aggravated and exemplary damages to reflect its disapproval of the defamer's conduct. There may also be cases where the apology, however genuine and contrite, will do nothing to cleanse the reputation of a plaintiff. But the essential requirement upon which the rule of mitigation is predicated is that there must be what the law regards as an apology. In its absence, the principle contended for does not arise for consideration.

The learned Judge in the instant case rejected the submission that the apology which I have reproduced earlier, was a true apology in law. He did this in the following passage in his judgment:

> The first defendant did not file his defence nor did he file on behalf of the sixth defendant. Anyway, in his evidence on behalf of himself and on behalf of the sixth defendant, he admitted that all the articles were libellous of the plaintiff. He offered the excuse that be had left the responsibility to edit those articles to the editor before they were printed and published in the said magazine. He told the Court that on discovering the four articles to be libellous he told the editor to make an apology. He also told the Court that he had made an apology which appeared in the March 1994 issue of the said magazine under the column ' Letters to the Editor'. It appears to me that the apology was a conditional apology since it contained the words 'if the said articles had tarnished the reputation of the plaintiff'. The first defendant informed the Court that he had dismissed the editor of the said magazine. The first defendant also stated that he met the plaintiff twice at the airport and apologised to him. What tantamounts to an effective apology? The requirements of an effective and adequate apology were aptly summarised by Begbe CJ in *Hoste v. Victoria Times Publishing Co.* [1889] 1 BCR 365 at 366 where he said:
>
> > That [the apology] is surely not sufficient. It is not the offer nor even the publication of an apology at all, but an offer to offer an apology. And even in terms, it seems to reserve to the defendant a right of judging whether the plaintiff is reasonable in demanding any particular form e.g., it offers to make an apology as the defendant thinks fit. Such an apology as merely 'beg your pardon', or 'sorry for it', is not sufficient in a case of libel. The defendant should admit that the charge was unfounded, that it was made without proper information, under an entire misapprehension of the real facts, etc., and that he regrets that it was published in his paper .... You should not offer to make, but actually make and publish at once, and unconditionally, such an apology, expressing sorrow, withdrawing the imputation, rehabilitating the plaintiffs character as well as you can; not stipulating that the plaintiff is to accept it; not making any terms but publishing it in the interest of truth, and because you are anxious to undo whatever harm which may have accrued from a wrong which you find you have been the unconscious instrument of inflicting. Then in your statement of defence you can state what you had done .... That is the only authority I know of making any reference to an apology in the pleadings. It will be for the jury to say whether it was a reasonable and proper apology, and whether it is sufficient to absolve the defendant from any or how much of the damage the plaintiff has suffered. Obviously some libels may inflict an injury and loss that no apology or retraction by, or even remorse of, the wretched, miserable, libeller can wholly efface.
>
> Therefore, in my view the apology by the first defendant and the sixth defendant was not a full and frank withdrawal of the libel contained in those articles and neither was it a complete and unqualified apology or a fair retraction.

In my judgment, that is a correct direction by the learned Judge of himself. That the apology was indeed conditional is a matter to which I have drawn attention by placing emphasis upon the word "If" appearing in it. Further, in the course of argument, Counsel for the

respondent drew the attention of this Court to another apology made to some other unfortunate individual who had suffered at the hands of Encik Shamsul's clients. That other apology appears on page 5 of the very same issue. It reads:

> Mi apologises to Tony Tiah and TA Securities Sdn. Bhd., Re the Article "Corporate Samurai"
>
> We, for and on behalf of Media Printext (M) Sdn Bhd, Editor-in-Chief, Haji Hasan bin Haji Hamzah, Editor, G. Vijaya Bharathi and Assistant Editor, Nazatul lzma, do hereby unconditionally and with deep regret admit that by the cover story entitled "Corporate Samurai" appearing in the January issue of the Malaysian Industry magazine, we have caused and are responsible for the publication of the false, malicious, derogatory, and injurious words and statements against Tony Tiah Thee Kian and TA Securities Sdn Bhd. We admit that the cover article has caused grave and irreparable damage and injury to the reputation and good stead of Tony Tiah Thee Kian and TA Securities Sdn Bhd. We also admit that the Editor, G.Vijaya Bharathi, was the writer of the cover article and he admits that it was highly irresponsible of him to have caused serious embarrassment and serious injury to Tony Tiah Thee Kian and TA Securities Sdn Bhd.
>
> We hereby unequivocally apologise to Tony Tiah Thee Kian and TA Securities Sdn Bhd for the publication of false, malicious, derogatory and injurious words and statements as contained in the cover story entitled 'Corporate Samurai' appearing in the January issue of the Malaysian Industry magazine. We covenant and undertake that we shall forthwith cease and refrain from publishing, circulating and distributing in any form or manner any words and statements that are defamatory and injurious to the reputation of Tony Tiah Thee Kian and/or TA Securities Sdn Bhd.
>
> The Publisher.

It does not require close scrutiny to see the glaring differences between this apology and the one published in respect of the respondent. The differences are important and reflect the attitude of these appellants. It is quite obvious that there was reluctance on their part to render a proper apology. Had they truly intended to mitigate the serious attacks that had been levelled against the respondent, they would most certainly have responded to the letter before action and published an apology in terms settled by the respondent and his solicitors. It follows from what I have said thus far that no difficulty is encountered in rejecting Counsel's submission on this point.

There remains to be dealt with, Encik Shamsul's complaint about the way in which the learned Judge had apportioned damages. He first submitted that the learned Judge had misdirected himself in failing to apply s. 18 of the Defamation Act, 1957 to the facts of this case. That section is in the following terms:

> 18. Whenever in an action of libel the plaintiff sues more than one defendant, whether jointly, severally, or in the alternative, and evidence is given of malice in one defendant or of any other matter of aggravation which would not be admissible in evidence against any other defendant if he were sued alone, such other defendant may apply to the Court to have the damages against himself and his co-defendants separately assessed, and if such application be made the Court shall assess the damages separately against each defendant and no defendant shall be liable nor shall execution issue against him for any further or other damages than shall be so assessed against him.

Counsel also read to us the following passage of the third edition of Gatley which he said applied to the present case and in reliance upon which he submitted that the learned Judge had fatally misdirected himself:

> In an action against two or more persons as co-defendants in respect of a joint libel the jury (in our jurisdiction, the Judge) may not discriminate between them in finding separate damages against the different defendants, but there must be one verdict and one judgment against all for the total damages awarded. Even though the defendants sever their defences, the jury have no power, jurisdiction, or authority to apportion the damages, and if they do so judgment cannot be entered against the several defendants for the amounts so apportioned. The unity of the verdict and of the judgment where the tort is joint is founded on and must stand with the legal theory of the liability of joint tortfeasors. It is the necessary and logical result of the legal principles applicable to this kind of action. What the plaintiff is entitled to receive is a sum representing the damage that he has suffered from a single wrong inflicted by all. The defendant has no right to say that his contribution to the injury was smaller than that of the others. Small though it may have been, the wrong might not have been committed at all if he had not taken part in it.
>
> In an action against two or more persons in respect of a joint libel one set of damages will be fixed and such damages must be assessed according to the aggregate of injury resulting from the common act.

Encik Shamsul's argument is that the learned Judge had erred in making separate awards against each appellant. I hope that I shall be for forgiven for frankly expressing my inability to comprehend this argument. Nevertheless, I shall try to deal with what I perceive to be his submission on this point.

The short answer to the submission mounted on s. 18 is that it was never raised before the learned Judge, a fact that was conceded by Counsel, and it is therefore too late in the day to argue it on appeal. In any event, it must be said, as a matter of fairness to the learned Judge, that he did make separate awards against the several defendants, so that the terms of the section appear to have been complied with, although there was no application made to him as contemplated by the section.

The complaint that only a single award against all the defendants in the Court below ought to have been made appears to cut across the argument based on s. 18. But I would say that even if Counsel is to be understood as making an alternative submission, the point made by the respondent and missed by the third and fourth appellants is that all the defendants were sued and found liable as several and not as joint tortfeasors, so that the principle of the common law relied upon does not apply.

For these reasons, I have no hesitation whatsoever in rejecting the submissions made on behalf of the third and fourth defendants.

Being satisfied that no error has been disclosed in the judgment of the learned Judge, these appeals had to be, and were dismissed. The usual orders that follow upon a dismissal were also made.

Hj. Lamin bin Hj Mohd Yunus PCA:

I have had the benefit of reading the judgments of my learned brothers Gopal Sri Ram and Abu Mansor Ali JJCA and I am in complete agreement with their views and findings in these appeals.

My learned brother Gopal Sri Ram JCA has dealt with every aspect of this case with great care. I have nothing more to add except to say a few words.

For consistency I shall refer to parties in these appeals in the order of the case numbers as filed in this Court just as in the same way as it is done by my learned brother Gopal Sri Ram JCA. Accordingly the 3rd defendant below whose case appears at the top of the list here shall hereafter be referred to as the 1st appellant, the 7th defendant as the 2nd appellant and so on.

So much has been adversely commented of the trial Judge in regard to his conduct of this case by the learned Counsel for the 1st appellant, Encik Karpal Singh employing such words as 'unholy haste' in the disposal of this case. It has often been said that Justice delayed is justice denied. In the instant case, with the speed as it was in the time taken by the learned Judge below to set the case for hearing, hearing the evidence and handing down his judgment, for which he should be given the thumbs up, he is now being accused of having denied justice to the four appellants. They were amongst the 7 defendants in the Court below who were all found equally guilty of libel and damages were imposed on them but the other three chose not to appeal and they have not cried "foul!".

To delay the disposal of a case is said to deny justice. To dispose of the same in good speed has also resulted in the Court being accused of denying justice. In this case, in particular the 1st appellant did not file his statement of defence and notwithstanding that he summoned his courage to put up the defence of justification in respect of which he need not be heard as a result of his failure to file his defence except on mitigation. Having perused the record I do not hesitate to say that no amount of time given to the 1st appellant will change his position. Having boldly informed the Court that his defence would be the defence of justification, I can only conclude that from his own evidence in particular that found in cross-examination, he had no intention of proving his case because he had no evidence to produce. It was of no surprise that he did not file his defence for he could not. As the learned trial Judge observed that he did not even apply for extension of time to file his defence. So also the others who did not file their statements of defence did not apply for extension of time. I am strongly of the view that it is desirable for a case of this nature be set for early trial and to bring it to its finality as early as circumstances permit. Where a person's character is being assailed and the facts are so fresh in everyone's mind so that in the course of the proceedings when a witness testifies relating to all the facts in issue, every single grain of the evidence can easily be appreciated and assessed in that almost at a moment's notice everything falls into place that easily because both the assailed, the assailant and the Judge are in every sense very much contemporaneous with the circumstances that are still prevailing as they are being described in the Court-room. The Court is in fact in receipt of the best evidence. Justice could not have been better served with the Judge making an immediate assessment of the evidence with his findings delivered without delay.

I have no doubt until now that the 1st appellant is a writer of international repute for he writes on both local and international issues and contributes to both the home and the overseas press. In that light it cannot be denied that he has at least a quarter of the world as his readers; hence his sphere of influence. I am sure many of us must have read his writings before this. One would have thought that he must have checked and counterchecked his sources of information and that he could provide ready proof in respect of all his statements and allegations. His article "Press Manoeuvers", the subject matter of the suit against the 1st appellant, was written with that easy flow clearly without intending, to give himself even a momentary opportunity to reflect on the effect of his own words. There are such things as human dignity, respectability and good character. He was emphatic in his stand for he said in evidence "In this article at page 9 of Exhibit Pl my defence is justification"

so that he was able to say "it is based on factual information that was based on reports I have heard... In cross examination he added "I cannot reveal the source of my information. I have no documents to support what I have written." And yet he had the audacity to use such words as "factual information" which in fact is not factual. If I may quote further the answers and questions in cross-examination

Q. Are you able to substantiate in Court that Tan Sri Vincent Tan obtained contracts from Dato' Samy Vellu?

A. No.

Q. Do you have any evidence that Tan Sri Vincent Tan applies for contracts from Dato' Samy Vellu?

A. No.

Q. Why did you say that Tan Sri Vincent Tan was interested to apply for contracts?

A. It is only from information.

Did you have any evidence that Annuar paid $800 million to take over the New Straits Times?

A. I have no evidence to produce in Court.

His answers to questions put in cross examination clearly show that he is no respecter of persons with blatant disregard for respectability and is prepared to maul any person in his path without sufficient evidence. He was prepared to tell the world the unfounded facts or rather to him "factual information" without giving due care to their consequences. To put it politely, this is irresponsible reporting.

In view of his answers in cross examination with his couldn't careless attitude the learned Judge below rightly and properly awarded aggravated damages. If the learned Judge below had ordered two-fold or even threefold damages as handed out to 1st appellant, I would have said nothing against it. As my learned brother Abu Mansor JCA has put it, the judgment in this case should serve as a signal to all journalists.

As I have indicated earlier that we were unanimous in dismissing the appeals and therefore we made the orders as we did.

Abu Mansor bin Ali JCA:

As a member of this panel, I wish to add that we were unanimous in rejecting this appeal. I have had the benefit of reading the judgment of my learned brother Judge, Gopal Sri Ram, with which I associate myself.

We noted that no pleadings had been filed except by the 2nd appellant. That being the case, can we blame, therefore, that the respondent's Counsel moved for an early trial? There are many cases where plaintiff's Counsel resort to the summary procedure where no defence had been filed. I agree with Y.A. Gopal Sri Ram that the allegation that the learned Judge was in "unholy haste" is unfair and is unfounded bearing in mind the facts.

Further, we are satisfied that the learned Judge had carefully looked for and found sufficient evidence of defamation and conspiracy to defame which, of course, merges with the tort of defamation.

En. Karpal Singh, in his usual forceful self, submitted that after having found defamation, the learned Judge should also have looked for proof of damages and not, as he put it, pluck it from the air.

Speaking for myself I am satisfied that it is trite law that no special damage need be pleaded and proved if the defamatory matter, as found by the learned Judge, speaks of the plaintiff in the way of his profession, office or calling and the plaintiff only claims general damages and not special.

The learned Judge also considered and found that the appellants were liable in aggravated damages because, having alleged justification miserably failed to adduce and call evidence to prove It. The learned Judge had also found the so-called apology was not a genuine and true apology but was conditional upon and punctuated by the many "ifs".

All in all the award of damages is in the discretion of the learned Judge. For myself, I wish to say that the learned Judge had considered the quantum carefully having regard to the position of the plaintiff in his world. I cannot say that the learned Judge was in error in law as to justify us interfering with the judgment. Speaking for myself, I fully endorse what had been meted out by the learned Judge. It is not excessive. I think the Court has to take a stand and deliver the message to all journalists and the media alike that they must act responsibly. They ought to know that they have a large following and that the reading public hold them in high esteem and have the tendency to accept what is written as gospel truth. If the appellants have to write and publish they should, therefore, have acted with responsibility. I support this assessment or measure of damages by the learned Judge as a deterrent to those who harbour the notion that they can malign with impunity or do it with a hope to get off lightly and I associate myself with what had been expressed by my brother Judge YA Gopal Sri Ram that there is absence of any authority or guide line from which measure of damages can be followed in libel cases. I associate myself with what had been stated that this Court is free to set its own values and would not look lightly when a person's reputation had been maligned or injured with impunity. I agree that a strong signal need be sent that libel is not cheap. As I have said we reject this appeal for reasons given above.